No. 80-795

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IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, *et al.*,

Petitioners,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC.,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of Minnesota

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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The American Federation of Labor and Congress of Industrial Organizations, a federation of 104 national and international unions with a total membership of 13,500,000 working men and women, files this brief *amicus curiae*, with the consent of the parties as provided for in the Rules of this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

Minnesota seeks in this case to justify a ban upon the distribution of any form of "printed or written material" (A-7), whether for free or at a price, on any of the public thoroughfares of the state's fairgrounds. The state in addition asserts the right to prohibit on the same thoroughfares solicitation of contributions to any religious, political or charitable cause.

Predictably, Minnesota seeks to characterize its sweeping restriction of communicative activity as merely a "time, place and manner" regulation. Brief for Petitioners (here

inafter "Pet. Br.") at 9. For, says the state, oral communication which is not a solicitation of funds is permitted on the fair's streets, roads, and parks,[1] while stationary distribution of literature and solicitation is permitted those religious, political, charitable, and labor groups that successfully compete on a "first-served" basis (Pet. Br. at 5) for a rented booth.[2] And, petitioners argue that the interests in (a) equal access for fair participants; (b) preventing annoyance of fairgoers; (c) prevention of fraud; and (d) promotion of order and safety all serve to justify the "non-content oriented" (Pet. Br. at 14) restrictions imposed.

Even as here summarized, and more evocatively when read in their entirety, petitioners' arguments create an inescapable sense of *deja vu*. For, in the 1930's and 1940's numerous municipalities sought to invoke against another small and unpopular religious sect, the Jehovah's Witnesses, and against the fledging labor movement, laws with the same effect of curbing the ability to disseminate the group's message on the common passageways. And, as we show in part I, *infra*, in these seminal cases concerning the

[1] The state represents that it "does not intend to restrict plaintiffs from walking about the fairgrounds and discussing their political, religious or other views with fair patrons." A-28. It is not clear whether this concession encompasses the right to speak to groups of fairgoers, but we assume—given the great stress placed upon the need for free movement upon the fairground's streets—that it does not. Thus, the right to "proselytize" seems to be simply a declaration that conversations among fairgoers will not be censored.

[2] Three hundred to five hundred applicants for use of a booth are denied each year. Pet. Br. at 5-6. Individuals and groups seeking to engage in non-commercial communicative activity stand on the same footing with respect to booth rental as commercial vendors. *Id.* Thus, it is quite possible that a group seeking to distribute handbills on political, religious, or economic issues, or to solicit contributions for a religious, political or charitable cause will be foreclosed entirely from the fairgrounds. In particular, a group seeking to publicize a dispute or issue first arising after booth rentals are completed (which the record suggests can occur over six months before the fair opens (A-35)) would be prohibited from any distribution or solicitation whatever at the fair.

right of citizens to propagate their views upon matters religious, political and economic, the governmental bodies seeking to justify restrictions of various stripes upon distribution and solicitation activity relied upon precisely the *same* set of asserted governmental interests as Minnesota does here. Moreover, save for the fact that none sought to point directly to the possibility of renting a storefront or other fixed location as constituting an alternative opportunity for communication sufficient to displace the chance to approach in some manner individual citizens in public locations, the municipalities involved in that litigation made arguments based on the fungibility of modes and methods of communication similar to those here advanced. It was in those very cases that the "time, place, and manner" concept was stated. And this court's decisions leave no doubt whatever that a sweeping preclusion all distribution and solicitation activity from the public walkways, streets, and parks of a municipality is *not* properly characterized as a "time, place and manner" restriction at all, and is not saved by the governmental interests here asserted.

Therefore, as we discuss in part II, *infra*, the only issue which even arguably presents an open question is whether the fact that this case concerns streets, roads, and parks of a *state's fairgrounds* rather than streets, roads and parks of a permanently-established town business district fundamentally alters the applicable First Amendment analysis. The state fails entirely to address this question, assuming instead that the principles governing access to other *fora* apply. See Pet. Br. at 15. But the cases the state relies on indicate no ground for declaring that the public walkways of a state fairgrounds differ in any pertinent way from ordinary city sidewalks.

ARGUMENT

I. Prohibition of All Distribution and Solicitation Activity on All Streets, Roads and Parks of A Town Violates the First Amendment.

1. No sophisticated analysis is necessary to establish that the activities in which respondents in this case wish to engage could not be entirely forbidden upon a munici-

pality's streets, roads, and parks. Rather, this Court unambiguously so established in cases decided thirty to forty years ago regarding the right to use the public streets and parks for communicating with the public.

First, with regard to the right to distribute literature, this Court unequivocally stated:

> [O]ne who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. *This right extends to the communication of ideas by handbills and literature as well as by the spoken word. Hague* v. *CIO*, 307 U.S. 496; *Schneider* v. *Irvington*, 308 U.S. 147, 162. . . . *Lovell* v. *Griffin*, 303 U.S. 444. [*Jamison* v. *Texas*, 318 U.S. 413, 416 (emphasis supplied).]

Thus, the fact that Minnesota is not attempting to forbid any form of oral proselytizing is entirely beside the point; the ordinances involved in *Lovell* (303 U.S. at 667), *Schneider* (308 U.S. at 154, 155, 156) and *Jamison* (318 U.S. at 671) were similarly limited to distribution of printed material.[3] Nor may the right to use the streets be eradicated because private and public locations other than streets are available. The Court expressly rejected in *Schneider* this suggestion when it was advanced to distinguish the prohibition in *Lovell* upon any distribution "within the limits of the City of Griffin":

> It is suggested that the Los Angeles and Worcester

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[3] See also *Lovell*, 303 U.S. at 452, finding the source of the right to distribute literature in the separate protection of freedom of the press:

> The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion . . . [nor can t]he ordinance be saved because it relates to distribution and not to publication, "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value," *Ex Parte Jackson*, 96 U.S. 727, 733.

Cf. Martin v. *City of Struthers*, 319 U.S. 141, 142; (*id.* at 15) (Murphy, J., concurring) (ban on house-to-house distribution of literature invalid although oral canvassing proselytizing is permitted.)

> ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty or expression in appropriate places abridged on the plea that it may be exercised in some other place. [*Schneider, supra,* 308 U.S. at 163.]

Although Minnesota advances no such distinction directly, since its ban applies equally to free distribution and to sales of religious, political, or economic tracts it is noteworthy in light of the interests Minnesota does advance in support of its rule that the right to distribute such printed material is not eradicated because the material is sold rather than given away:

> But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. [*Murdock* v. *Pennsylvania,* 319 U.S. 105, 111; see also *Jamison, supra,* 318 U.S. 413, 415-416; *Schneider, supra,* 308 U.S. at 154, 162, 163.]

Second, similarly protected under the First Amendment is the right to use the city streets to solicit from passersby contributions for a religious, charitable, or political cause. This Court recently reviewed the cases so holding (*Schneider, supra; Cantwell* v. *Connecticut,* 310 U.S. 296; *Jamison, supra; Largent* v. *Texas,* 318 U.S. 418; and *Murdock, supra*), summarizing them as follows:

> Prior authorities, therefore, clearly establish that charitable appeals for funds, on the street or door to door, involves a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.

[*Village of Schaumberg* v. *Citizens*, 444 U.S. 620, 632.][4]

The very term "solicit," of course, connotes approaching others rather than awaiting their expression of interest, and the cases expressly so recognize. *Murdock, supra,* 319 U.S. at 108-109; *Cantwell, supra,* 310 U.S. at 902. And the Court has as well addressed and rejected the view that a ban upon solicitation in part rather than all of a city is valid. *Murdock,* 319 U.S. at 117.

Third, the cases establishing the general right to distribute literature and to solicit contributions on town streets also state the "time, place and manner" concept. *Lovell, supra,* 303 U.S. at 451; *Hague, supra,* 307 U.S. at 516; *Schneider, supra,* 308 U.S. at 160-61; *Cantwell, supra,* 310 U.S. at 304, 306-07; *Jamison, supra,* 318 U.S. at 416; *Martin, supra,* 319 U.S. at 143; *Murdock, supra,* 319 U.S. at 116. From that fact alone, one could surmise that the Court did not intend regulation in pursuit of "the general comfort and convenience and peace and good order" (*Hague, supra,* 307 U.S. at 516) to eliminate entirely the rights recognized. Those rights were, as we have shown, not merely the *general* right somehow to attempt to communicate views, but the *specific* right to distribute literature and and to solicit contributions along public streets. It would be self defeating for the Court to construe a rule prohibiting all distribution of literature or solicitation as a mere neutral regulation of the right to distribute literature and to solicit on city streets.

Indeed, the Court made quite clear several times that it

[4] It does not appear that in any of the cases the solicitation of contributions involved approaching individuals walking along the street, rather than summoning people to the door of their own homes. But the latter surely presents a more difficult question than the former; additional state interests in protection of privacy and property are present in the house-to-house canvassing situation (*see,* e.g., *Martin, supra,* 319 U.S. at 144-145; *Hynes* v. *Oradell,* 425 U.S. at 619). While no state interests beyond those involved in literature distribution of sales are implicated by street solicitation, that the quotation in the text from *Schamberg* recognizes a right to solicit "on the street" confirms this observation.

was not engaged in taking with one hand what it had granted with the other when it alluded to the possibility of narrow time, place and manner regulations. For example, in *Hague* the Court stressed that while "[t]he privilege of a citizen of the United States to use the streets and parks for communication of views . . . may be regulated . . . *it must not, in the guise of regulation, be denied.*" *Id.*, at 515-16. Similarly in *Schneider*, the Court noted that a municipality may "lawfully regulate the conduct of those using the streets," but stated that it may do so only "[s]o long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature." 308 U.S. at 160. Again—for the state and local governments of forty years ago were apparently no more receptive to the message than Minnesota is now—the Court repeated in *Jamison*, that while a city, as part of its "powers over its streets" can make "reasonable regulations for the control of traffic and the maintenance of order" (*id.* at 415), it does not have "the power *absolutely to prohibit the use of the streets* for the . . . dissemination of information by handbills . . . at all times, at all places, and under all circumstances," (*id.* at 416 (emphasis supplied)).

What the Court did have in mind by noting that "the peace, good order and comfort of the community may imperatively require regulation of the time, place and manner of distribution" (*Martin, supra*, 319 U.S. at 863), can be best gleaned from the example it gave, and from the two cases of the era in which regulation of use of the streets for communicative activity were sustained—*Cox* v. *New Hampshire*, 312 U.S. 569; *Kovacs* v. *Cooper*, 336 U.S. 77. Stated to be valid regulations of the right to use the streets to solicit and to distribute literature were:

> (a) A rule against "taking [one's] stand in the middle of a crowded street, contrary to traffic regulations, and maintain[ing] [one's] position to the stoppage of all traffic." *Schneider*, 308 U.S. at 160.
>
> (b) Prohibition of forming "a cordon across the street . . . [allowing] no pedestrian to pass who did not accept a tendered leaflet." *Id.*

(c) "Regulations against throwing literature broadcast in the streets." *Id.*

(d) Penal laws prohibiting fraud and neutral registration requirements. *Cantwell, supra,* 319 U.S. at 306.

(e) A licensing requirement for parades or processions, where " 'the distribution of literature' . . . was not in any respect regulated," nor were "groups not marching in formation," and where the licensing authorities were without power to deny altogether permission to parade, although they could condition the permit upon "such conditions or changes in time, place and manner as would avoid disturbance." *Cox* v. *New Hampshire, supra,* 312 U.S. at 575-576.

(f) A rule against "a man with a communicable disease . . . [distributing] leaflets on the street or to homes." *Martin, supra,* 319 U.S. at 143.

(g) A law "preventing the distribution of leaflets in a church against the will of the church authorities." *Id.*

(h) A prohibition upon overamplified loudspeakers. *Kovacs, supra.*

These examples illustrate the oft-repeated principle that to be valid, *as applied to communicative activity on the public streets,* an ordinance must be "narrowly drawn" (*Murdock, supra,* 319 U.S. at 116) so as to serve only the non-speech interests which justify the intrusion.

Minnesota proposes a contrary rule—that a non-content-related restriction of communicative activity on the public streets "will pass constitutional muster so long as it allows for appropriate alternative means of engaging in communication or religious activity." Pet. Br. at 16. But, as the absence of any specific page citations might suggest, the cases cited in support of that proposition (*Grayned* v. *Rockford,* 408 U.S. 102; *Cox* v. *New Hampshire, supra; Cox* v. *Louisiana,* 379 U.S. 536) offer no support whatever for this proposition, and are in fact directly to the contrary. *Grayned* expressly noted that any such regulation must be "narrowly tailored to further the State's legitimate interest." so that " 'undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.' [*Tinker* v. *Des Moines Ind. School Dist.,* 393 U.S. 503, 512]." 408 U.S. at 116-117.

Minnesota's specific analogy to *Cox* v. *New Hampshire* (Pet. Br. 31-32) fails precisely because the narrowness of the *Cox* regulation is ignored: In *Cox*, the state did not *forbid* parades generally upon public streets, nor permit public authorities to refuse to license a particular parade. Rather, the "licensing" was in effect a prior notice requirement so that police protection could be assured and conflicting parades at the same location at the same time prevented.[5]

Thus, Minnesota's attempt to cast its "booth rule" as a "time, place or manner" restriction turns inside out the cases in which that concept was developed. Only limited, tailored restrictions upon the right to use city streets for solicitation and distribution were contemplated, not the complete supplanting of that right because the activity was permitted elsewhere.

2. It is possible, of course, that Minnesota could come up with some convincing consideration previously ignored which would justify reconsideration of these now well-

[5] In later cases as well, the Court has upheld time, place, and manner regulation of communicative activity on public streets (as opposed to other publicly owned locations, compare, e.g. *Adderly* v. *Florida*, 385 U.S. 39) only when "the manner of expression is *basically incompatible* with the normal activity of a particular place at a particular time" (*Grayned supra*, 408 U.S. at 116, emphasis supplied), and when the legislation enforced is "narrowly tailored" (*id.*) to eliminating such incompatible activity. Perhaps the paradigm of such valid legislation was that involved in *Grayned:* only activity "adjacent to any building in which [there is] a school or . . . class" (*id.* at 107-108) was included; the ban applied only when the "school or. . . . class . . . is in session (*id.*)"; and only activity which actually "disrupts or is about to disrupt" (*id.* at 119) was forbidden. The state interest in maintaining a conducive atmosphere for learning was held to justify this finely tuned rule. See also *Cox* v. *Louisiana*, 379 U.S. 559 (Statute forbidding picketing "in or near" a courthouse with the intent of interfacing with, obstruction or impeding administration of justice" justified by need to protect "appearance of even-handed administration of justice"); *Cameron* v. *Johnson*, 390 U.S. 611 (Statute prohibiting picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egree to and from any . . . county . . . courthouses").

settled doctrines. But, in fact, all of the reasons the state puts forward in support of its rule were considered and rejected in the earlier cases.

As to the plea that equality among potential exhibitors must be maintained,[6] the Court repeatedly stressed that "freedom of press, freedom of speech, freedom of religion are in a preferred position" (*Murdock, supra,* 319 U.S. at 115), so that:

> The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not have the ordinance. [*Id.*]

That "hucksters and peddlers" have now been recognized to have some First Amendment rights as well (e.g. *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Council,* 425 U.S. 748) does not alter the analysis; those rights are not coextensive with those seeking to disseminate religious, political and economic views rather that to sell a product. Compare *In Re Primus,* 436 U.S. 412, with *Ohralik* v. *Ohio State Bar Ass'n,* 436 U.S. 447; *see Ohralik,* 436 U.S. at 456 ("commercial speech [is afforded] a limited measure of protection . . . allowing modes of regulation that might be impermissible in the realm of noncommercial expression").

Nor is protection of fairgoers from the momentary annoyance of having to refuse a solicitator or a distributor of literature a valid ground for denying wholesale the right to make the approach. In *Martin, supra,* the primary argument made on behalf of the prohibition upon door-to-door distribution and embraced by dissenting members of

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[6] Contrary to the state's suggestion, we do not understand that ISKON is seeking a preferred position *among* those who wish to engage in propagation of political, economic, or religious views by street distribution or solicitation of the fairgrounds. Rather, the right respondents seek to assure would be available equally to groups such as labor organization and persons supporting political candidates and causes.

the Court was that "summoning [residents] . . . to their doors . . . may . . . disturb householders" (319 U.S. at 156 (Reed, J., dissenting)); indeed, the city showed in particular that many of the inhabitants in the primarily industrial town worked evenings, "so that casual bell pushers might seriously interfere with the hours of sleep although they call at high noon," (*id.* at 144.). Conceding that "door to door distributors of literature may be . . . a nuisance" (*id.* at 145), the Court nonetheless refused to approve a complete ban upon such activity, viewing the responsibility for citizens themselves to take steps to refuse unwanted material as preferable to substituting "the judgment of the community for the judgment of the householder . . . [and limiting] the dissemination of knowledge," (*id.* at 144).

As to prevention of fraud, both the seminal cases and more recent ones do indeed recognize that the interest is a substantial one. See Pet. Br. at 24-25. But, the Court in each of the cases cited by petitioners, and in others as well, refused to approve a prophylactic regulation premised upon fraud prevention, holding instead that government "may serve its legitimate interests [in preventing fraud] but it must do so by narrowly drawn regulations designed to serve those interests without necessarily interfering with First Amendment freedoms" (*Village of Schamberg, supra,* 444 U.S. at 637); and that the fact that broad prohibition may be "easier" to enforce (Pet. Br. at 27) is of no moment, because "considerations of this sort do not empower a municipality to abridge freedom of speech and press" (*Schneider, supra,* 308 U.S. at 104).

Thus, while the Court has several times suggested that registration requirements designed only to assure that the individuals who solicit the public for funds are accountable under the penal laws may well be acceptable (e.g., *Cant-*

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[7] Preventing any annoyance of others due to the *ideas* espoused by street distributors or solicitors is, of course, not an interest the state may further under the First Amendment. This Court has had many occasions so to reiterate. See, e.g., *Cantwell, supra,* 310 U.S. at 310; *Martin, supra,* 319 U.S. at 143; *Kunz* v. *New York,* 340 U.S. 290.

well, supra, 310 U.S. at 306; *Schneider, supra,* 308 U.S. at 163; *Murdock, supra,* 319 U.S. at 113), the Court recently has disapproved two registration ordinances primarily because they permitted either directly or by delegation to city officials denial of the right to solicit freely in some circumstances. *Hynes, supra; Village of Schaumberg, supra.* The latter case is particularly informative, for there was an attempt, at least, to cure the primary defect the Court had pointed to in earlier solicitation statutes (the spectre of censorship through the exercise of administrative discretion), and there was as well an effort to create an objective measure to separate the potentially fraudulent from the bona fides. Nonetheless, the Court insisted that "[t]he Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation" (444 U.S. at 637); including penal prosecutions and disclosure statutes. A prohibition upon *all* solicitation rather than on only some, in the name of fraud prevention, should not fare better.[8]

Finally, the state's desire to preserve free use of the streets is the interest perhaps most vigorously expounded by the governmental entities involved in the case of 30 and 40 years ago. Once again, the Court conceded the interest to be substantial but refused to countenance a complete prohibition:

> Of course, states may provide for control of travel on their streets in order to insure the safety and convenience of the travelling public. *Cox* v. *New Hampshire,* 312 U.S. 569. . . . They may punish conduct on their streets which is in violation of a valid law. [citation omitted.] . . . [B]ut [t]he right to distribute handbills concerning religious subjects on the streets may not be prohibited at all times, at all places, and all circumstances. [*Jamison, supra,* 318 U.S. at 416; see also *Hague, supra; Schneider, supra.*][9]

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[8] Minnesota's only suggestions as to the relevance of the booth rule to fraud protection is "to enhance the ability of fairgoers to become informed of the identity and purpose of salespersons" (Pet. Br. at 25) and to facilitate prosecutions (*id.* at 28). Both interests could be met by a registration and identification program for roving solicitors.

[9] The citation to *Cox* v. *New Hampshire* as an example of traffic

Thus, the state in this case has advanced no interest different *in kind* from those considered by this Court when it forbade broad prohibition upon solicitation and distribution on city streets. The only question, then, is whether upon a state fairgrounds the state's need to advance its interest is so much greater in *degree* than upon city streets as to justify a complete prohibition upon peripatetic distribution and solicitation.

II. The Public Walkways of a State Fair Do Not Differ From the Streets and Roads of a City in Any Way Which Would Justify a Complete Prohibition of Solicitation and Distribution.

This Court has in recent years looked at several different types of public property in order to determine whether the same broad tolerance for communicative activity that prevails upon city streets must be exercised. Generally, the inquiry has turned upon the perception that "public places differ very much in their character, and before you could say whether a certain thing could be done in a certain place you would have to know the history of the particular place." (*M'Ara* v. *Magistrates of Edinburgh* [1913] Sess. Cas. 1059, 1973-74; quoted in *Lehman* v. *City of Shaker Heights*, 418 U.S. 298, 302. As a consequence, "the nature of the forum and the conflicting interests involved" (*Lehman*, 418 U.S. at 302) are the relevant considerations.

As to the "nature of the forum," the state fairground's thoroughfares are in every respect imaginable comparable to city streets. The physical resemblance is plain, as a brief glance at the map which appears in the Appendix suggests (A-37). That the streets and roads are referred to as such by state officials (A-35), and are even given street names is indicative of the resemblance (A-41, A-57). Compare *Lehman, supra* (interior of public transit vehicles is not subject to public forum analysis because "[h]ere, we have no open spaces, no meeting hall, park, street corner or other public thoroughfare." (*Id.* at 303.)

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control is of particular interest. It suggests, as does a reading of the opinion itself, that the Court viewed a parade as something quite different from diffuse distribution because a parade necessarily interferes with normal street traffic to some substantial degree.

With respect as well to the "pattern of [their] normal activity" (*Grayned, supra,* 408 U.S. at 116), city streets and state fair streets would seem indistinguishable. Both locations are likely to be noisy (contrast *Brown* v. *Louisiana,* 383 U.S. 131 (library); *Tinker, supra* (school)) and crowded, and in both instances some individuals may be walking along purposefully toward a goal while others are wandering, talking, or otherwise passing the time. Indeed, one would expect that the proportion of the former to the latter on a city street to be greater than in a state fairgrounds. Thus, unlike the interior of public libraries, schools, and auditoriums (*Southeastern Promotions Ltd.* v. *Conrad,* 420 U.S. 546), all of which are public forums only to a limited degree (*cf. Grayned, supra,* 408 U.S. at 116), a state fairgrounds, as far as its basic form and function are concerned, is identical to a city street.

Nor can the state interests pertinent to controlling the use of the streets be distinguished. As we have seen (part I, *supra*) there is no difference in kind in the interests asserted in this case and the cases concerning city streets. In this aspect the case differs profoundly from *Greer* v. *Spock,* 424 U.S. 828. In *Greer* the physical and ambience aspects of the location, an open military base, were, as in this case, quite similar to those of a town. *Id.* at 851. But at least two strong state interests—"maintaining the reality and appearance of the political neutrality of the Armed Service" and the military need for "morale and discipline . . . particularly . . . the primary function of the base [—] to provide basic combat training for new recruits" (*id.* at 845, 848 (Powell, J., concurring); see also *id.* at 838-839 (majority opinion))—were present in *Greer* which were of no relevance to an ordinary municipality. Here, there is no additional state interest, and therefore no ground for departing from the analysis applied to city streets.

Minnesota argues that its interest in avoiding annoyance to fairgoers is greater than that of a city with respect to pedestrians (Pet. Br. at 22-23). But a fairgrounds is not similar in this respect to a ballpark or some other entertainment event" (*id.* at 23), for it is closed only in the sense that a medieval walled city is "closed"; there is still a large,

open area in which to wander, and the notion that fairgoers could not avoid unwanted solicitations by simply walking on is unrealistic.

Indeed, the state is somewhat contradictory on this point, for it suggests later that state fairs differ from city streets in that it is easier for roving solicitors to vanish as "a face that disappears in the crowd" (*id.* at 28), so the interest in fraud prevention requires more than registration and prosecution of actual frauds. In fact, the one observation is no more valid than the other, and the possibility of either the solicitor avoiding the police or the pedestrian refusing the solicitor would appear to be the same on the fairgrounds as on the street.

Finally, the public safety interest upon the fairgrounds is again not substantially different from that present in cities, public streets are also congested, and in cities "[m]any [shoppers] and workers [too] need medical care for injuries." Pet. Br. 30. The reliance in this respect upon *Cox* v. *New Hampshire* is, for reasons alluded to earlier, entirely misplaced; *Cox* involved a parade, which is inherently and necessarily disruptive of traffic, and at any rate did not permit a prohibition but only regulation.

In sum, Minnesota has pointed to no aspect of its operation of the state fairs which differs in any significant way from the problems faced daily by municipal authorities. Just as the Court has required those authorities to solve their problems by means short of a complete prohibition upon use of the streets for distribution and solicitation so it must require the state in this case to do the same.

CONCLUSION

For the above stated reasons the judgment below should be affirmed.

Respectively submitted,

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